

§ 438.364. The commenter felt that the MCO should be responsible for designing interventions for improving its members' quality of care, and the EQR process should evaluate the effectiveness of these MCO interventions. Another commenter recommended these sections be deleted, contending that the Act does not require an external entity to perform any of the activities listed under paragraphs (a)(2) through (a)(5).

Response: As stated earlier, we agree that the State is ultimately responsible for rendering decisions about MCO and PIHP performance, and that EQR results represent one source of information States can use to determine MCO and PIHP performance. However, the Congress, in the BBA, stated that the EQRO is to perform a review of "the quality outcomes and timeliness of, and access to the items and services for which the organization is responsible." The Congress further required that the results of the reviews be made available to multiple parties. We believe that a review requires the EQRO to make judgements regarding the MCOs' and PIHPs' performance in these areas and that the judgements can reasonably be expected to point to the MCOs' and PIHPs' strengths and weaknesses, recommendations about the quality, timeliness, and access to services provided by MCOs and PIHPs, and for how to make improvements. In order to enable the EQR process to be as effective and useful as possible, we retain these provisions in the final rule.

Comment: One commenter recommended that the regulation specify that the EQR results be made available in alternative formats for persons with sensory impairments, when requested.

Response: This comment appropriately suggests accommodations for persons with disabilities. At the end of § 438.364(b), in response to this comment we have added a sentence requiring States to make the EQR results available in alternative formats for persons with sensory impairments when requested.

Comment: Several commenters believed that while it may make sense to mandate disclosure of valid, reliable, and objective performance, and satisfaction measures, States should not be required to disclose the results of other health plan operations, such as contractual compliance, and quality improvement studies. In the view of these commenters, EQR activities should promote a frank assessment of performance in order to provide MCOs and PIHPs the knowledge necessary to perform better in the future. The

commenters suggested that if the results of quality improvement studies were made public, MCOs would not treat the process as an unfettered opportunity to assess their own performance. Instead, the commenters believed they would tend to conduct studies in a way that is likely to generate favorable outcomes and, thereby, meaningful quality improvement efforts. One of these commenters also noted that if the primary audience for this information was Medicaid enrollees, we needed to consider whether such a detailed technical report would be relevant to our beneficiaries' needs.

Response: As we indicated in the preamble to the proposed rule, we proposed to require only that summary information made generally available is sufficient to enable interested parties to evaluate the conclusions of the EQR. The State is not expected to provide more detailed underlying data to beneficiaries or the general public. However, to clarify the level of detail to be provided in the EQR results, in response to this comment, we are revising § 438.364(a)(1)(iii) to require only that a description of data be provided in the technical report, as opposed to requiring that the actual data obtained be provided. Our intention was never to require that raw data be provided. In addition, as noted above, we are providing clarifying language in § 438.364(a)(1) to make clear that the technical report conclusions address timeliness and access to care as well as quality of care.

We note that section 1932(c)(2)(A)(iv) of the Act specifies that EQR results be made available to providers, enrollees, and potential enrollees. In the proposed rule, we broadened this requirement to specify that the results be made available to the general public. To ensure that adequate information is available for beneficiaries, as well as providers, beneficiary advocates, and other stakeholder, we believe that some detail in the report is warranted. In addition to making the EQR results available, States have the flexibility to repackage these results in order to address specific audiences more appropriately.

Comment: Many commenters agreed with our effort to ensure public access to EQR results. The commenters also recommended that the findings of private accreditation reviews be made available to the public when they substitute for all or part of the EQR. They stated that this is consistent with the President's Advisory Commission of Consumer Protection and Quality in the Health Care Industry recommendation that when a private accreditation is

used, there must be full disclosure of the standards, survey protocols, and the detailed information from the surveys.

Response: Section 438.364 identifies the results of the EQR process that must be made available and to whom it must be made available. When an EQRO is using private accreditation or Medicare review results under the nonduplication option under § 438.360, the EQR results, in accordance with § 438.364(a)(1), must still include the information required under paragraphs (a)(1)(i) through (a)(1)(iv) of this section. We believe that when a State chooses to use the results of a Medicare or private accreditation review to replace a Medicaid review, that there must be information on the data obtained from the Medicare or accreditation review and conclusions drawn from the data consistent with § 438.364(a)(1)(iii) and (a)(1)(iv).

Comment: One commenter asked us to clarify whether the regulation envisions that the full technical report be available to the public, or whether only certain information about the technical report will be made available. The commenter recommended that we establish guidelines for preparation of a summary report that must be developed from the technical report. The commenter believes that a summary report will be more useful to the public and will avoid the potential for the release of proprietary information that might appear in the reports.

Response: As we stated in the preamble of the proposed rule, we are only requiring that States make available summary-level information that is "sufficient to enable interested parties to evaluate the conclusions of the EQR." The State is not expected to provide more detailed underlying data or proprietary information to beneficiaries or the general public. As we noted earlier, to provide clarification on the level of detail to be provided in the EQR results, we are revising § 438.364 (a)(1)(iii) to require that a description of data be provided in the technical report as opposed to requiring that the data obtained be provided.

K. Federal Financial Participation (FFP) (§ 438.370)

Proposed § 438.370 provided that FFP would be available (1) at the 75 percent rate for EQR, the conduct of EQR activities, and the production of EQR results, by EQROs and their subcontractors, and (2) at the 50 percent rate for EQR-related activities performed by entities not qualifying as EQROs. The 50 percent rate applies even if the activities are of the same type as those that would be matched at the 75 percent rate if performed by an EQRO.